

## **Chapter 75**

### **EXCAVATIONS**

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**[HISTORY: Adopted by the Town Board of the Town of Elma as indicated in article histories. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Building construction — See Ch. 52.**

**Flood damage prevention — See Ch. 82.**

**Filling and grading — See Ch. 77.**

**Stormwater management — See Ch. 120.**



ARTICLE I  
**General Regulations**  
**[Adopted 6-27-1956 by Ord. No. 4]**

**§ 75-1. Declaration of policy.**

It is hereby declared to be the policy of the Town Board to provide for the proper use of land to prevent all manner of excavations which create pits, holes or hollows in the earth, leaving it in a hazardous or dangerous state, or which cause soil erosion which depletes the land of its natural vegetative cover and supply of organic material, renders such land unproductive and unsuitable for agricultural purposes and undesirable for building homes, resulting in lower land values. By this article the Town Board seeks to remove the danger to health and life caused by deep excavations remaining in the ground and the stripping of topsoil, thereby resulting in damage to agricultural crops through dust storms in dry weather, by exposure of the bare earth to wind action and in wet periods by pools of water, which Article will promote the safety, health and general welfare of the people of the Town.

**§ 75-2. Compliance with standards required; exceptions.**

No excavation for purposes other than the construction of a wall, driveway, sidewalk, building or part thereof, or as permitted by § 75-8 of this article, shall be commenced except in conformity with the provisions of this article.

**§ 75-3. Permit required; application.**

- A. Before any excavation for purposes other than the construction of a wall, driveway, sidewalk, building or part thereof, farming or a public use is commenced and topsoil, earth, sand, gravel, rock or other substance is removed from the ground, the owner, lessee or agent of the premises shall obtain a written permit therefor from the Town Board, except that where operations are being carried on at the time this article becomes effective, a period of 30 days shall be allowed for obtaining a permit while operations continue. However, all such excavations shall be subject to all provisions of this article from the date of its adoption.
- B. For that purpose, each applicant shall file with the Town Clerk of the Town of Elma, New York, a verified application for such permit, containing a detailed statement of the proposed work, together with a plan. If such excavation is below road level or the contour of adjoining property, this plan must be made by a duly licensed engineer or surveyor. The following information shall be required:
- (1) All information as required on the application form prepared by the Town Board, including a detailed statement of the proposed work and a three-dimensional sketch of the proposed excavation and exact condition of the plot or premises before work is commenced and proposed condition of said plot or premises after the work is completed.
  - (2) The plan shall be drawn to a scale of not less than one inch equaling 100 feet and give all streets adjoining the property, the location and dimensions of the premises upon which it is proposed to excavate, the location, size and use of any buildings, cross-section of the property, giving elevations thereof at intervals of one-hundred-foot squares and also at each break in the grades, and the elevation of the premises as compared to the elevation of any abutting highways.
  - (3) For areas where only topsoil is to be removed, the plan shall show the provisions that have been made for draining or otherwise preventing the collection of water on any portion of said plot which is not restored to original grade.
  - (4) A duly acknowledged consent, in writing, of the owner or lessee of the premises and mortgagee, if any, including his or their addresses.
  - (5) Receipted tax bills or a certificate from the Receiver of Taxes of the Town of Elma and the County Treasurer of Erie County showing payment of all taxes and assessments to date against the property

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described in the application.

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- (6) A certificate of the Superintendent of Highways of the Town of Elma that such proposed excavation and the finished grades of said property as shown on said map will not interfere with the drainage or endanger any road, street or highway of the State of New York, the County of Erie or the Town of Elma or other property of said state, county or Town.

#### **§ 75-4. Sand bank and gravel pits and pit excavations.**

Requirements for sand bank and gravel pits and pit excavations shall be as follows:

A. No such excavations shall be made:

- (1) Within 20 feet of any property line; however, the Town Board may, within its discretion, allow excavations closer than 20 feet of any property line, provided that the applicant submits to the Town Board a duly acknowledged consent, in writing, of the owner, lessee and mortgagee, if any, of the adjoining property affected, consenting to such excavation and shall state the distance agreed upon between the parties.
- (2) Within 100 feet of the edge of any highway right-of-way line.

B. Said excavations shall be leveled on the bottom by refilling, if necessary, or grading, all sides being left with a slope from top to bottom of not more than 20%; except that where the material being removed is rock, in lieu of sloping all sides of the excavation as hereinbefore provided, a permanent fence or barricade designed to effectively prohibit access to the excavation must be erected on all sides bordering streets, highways and neighboring properties, and at the conclusion of operations, a permanent fence or barricade must be erected and maintained on all sides of such excavation, except that where the pit or excavation is below the water level, this excavation must be drained.

C. During operations at any such excavation, the licensee shall comply with any direction by the Town Superintendent of Highways for control of dust at said operation. Failure to comply shall be grounds for revocation of any permit by the Town Board in its discretion.

#### **§ 75-5. Topsoil stripping and removal.**

No stripping or removal of topsoil shall be made within 10 feet of any property line, and, upon completion of the work, the premises, if below grade, shall be graded to the level of the abutting highway or the original grade if the same were below the level of the highway. Dustdown, or its equal, shall be spread to prevent dust from flying, and there shall be left upon the surface of the land from which topsoil is removed not less than five inches of topsoil from the original topsoil removed. All areas from which topsoil is removed shall, during the period between April 1 and May 15 or August 15 and October 1, be prepared into a loose level seedbed, limed, fertilized and seeded in the following steps:

A. Areas to be used for nonagricultural purposes:

- (1) Apply ground limestone at the rate of three tons per acre.
- (2) Apply 5-10-10 fertilizer at the rate of 600 pounds per acre.
- (3) Disk area to work limestone and fertilizer into the soil to a depth of at least three inches.
- (4) Smooth area with a smoothing harrow.
- (5) Sow the following seed mixture at the rate of 24 pounds per acre.

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| <b>Seed</b>                      | <b>Pounds</b> |
|----------------------------------|---------------|
| New York State broadleaf trefoil | 7             |
| Timothy                          | 5             |
| Kentucky bluegrass               | 2             |
| Ryegrass                         | 10            |
|                                  | <hr/>         |
|                                  | Total: 24     |

(6) Brush in seed lightly.

(7) Roll firm with ground roller.

B. Where this area is to be used for agricultural purposes, regular farm practices shall be deemed compliance.

#### **§ 75-6. Bond or deposit required; certificate of completion.**

The following provisions shall be applicable to all excavations and topsoil removal:

- A. Before the issuance of a permit, the applicant and the owner of record of the premises shall execute and file with the Town Clerk a bond, approved by the Town Board of the Town of Elma, in an amount to be fixed by said Board, but not less than \$2,000, with a surety company as surety and conditioned for the faithful performance of the conditions contained in this article, the observance of all state, county and municipal ordinances and laws and to indemnify the Town of Elma and/or the Superintendent of Highways for any damage to Town property. In the event of a default, such bond shall be forfeited to the Town of Elma. **[Amended 2-21-1968]**
- B. Said bond shall remain in full force and effect until a certificate of completion has been issued by the Town Board, certifying to the fact that all provisions of this article and conditions of the permit have been fully complied with. Application for such certificate shall be made by the applicant, owner, lessee or his agent on forms provided by the Town of Elma and shall be accompanied by a map drawn to scale showing a cross section of the affected property, giving elevations thereof as provided in § 75-3B(2) of this article, after the completion of operations, who shall also certify that there is not less than five inches of topsoil remaining upon the ground from which topsoil has been removed and that such area has been seeded in compliance with § 75-5 hereof.
- C. In lieu of such bond, a cash deposit or deposit of negotiable securities may be made with the Supervisor of the Town of Elma.

#### **§ 75-7. Permits; fees. [Amended 2-21-1968, 3-7-1979]**

- A. The Town Clerk, when authorized by the Town Board, shall issue permits and charge and collect the following fees: fees for removal of topsoil, gravel, fill, rock and subsoil, which shall be as fixed by resolution of the Town Board, from time to time.
- B. Payments of the fee for permits shall be made at the time of application and thereafter on the 15th day of March of the calendar year, if said permit is renewed and extended.
- C. All permits shall expire on March 15 of each year unless extended by the Town Board.

#### **§ 75-8. Exemptions from provisions.**

- A. Nothing contained in this article shall require a person to obtain a permit for or prevent a person from removing topsoil, gravel or fill from one part of his lands to another part of the same premises when such removal is necessary as an accessory use or is made for the purpose of farming or improving said property.

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B. Excavations for ponds, land drainage diversions or other conservation measures which are installed in accordance with a written plan of conservation operations contained in agreement with the Erie County Soil Conservation District are exempt from the provisions of this article. Before any excavation is commenced under this section, such agreement shall be displayed to the Town Board.

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#### **§ 75-9. Variances or modification of provisions.**

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this article, the Town Board shall have power to vary and modify the application of such article so that the spirit of the article shall be observed, public safety and welfare secured and substantial justice done.

#### **§ 75-10. Penalties for offenses. [Amended 6-3-1981]**

For any and every violation of the provisions of this article, the owner, general agent or contractor of a building or premises where such violations have been committed or shall exist and the lessee or tenant of the premises where such violation has been committed or shall exist and the owner, general agent, contractor, lessee or tenant of any part of the premises in which part of said violation has been committed or shall exist and the general agent, architect, engineer, surveyor or building contractor who maintains, permits, takes part or assists in any such violation or who maintains any premises in which such violation shall exist shall be guilty of a violation, punishable by a fine of not more than \$250 or by imprisonment for a term of not more than 15 days, or both. Each week's continued willful violation shall constitute a separate additional violation. Such fines or penalties shall be collected as like fines are now by law collected.



ARTICLE II  
**Registry of Operations of Underground Facilities**  
**[Adopted 3-19-1975]**

**§ 75-11. Designation of central registry.**

The Town Clerk's office of the Town of Elma is designated as the central registry for the Town of Elma in accordance with the requirements of 12 NYCRR 53.<sup>1</sup>

**§ 75-12. Maintenance of records; dissemination of information.**

The Town Clerk shall maintain such records and disseminate such information as is required by said 12 NYCRR 53, and as the same may be modified from time to time.

**§ 75-13. Notice to excavators.**

The Town Clerk shall publish in the East Aurora Advertiser, the official newspaper of the Town of Elma, a notice to excavators of the establishment of the central registry of operators of underground facilities for two successive weeks.

**§ 75-14. Fee.**

The Town Clerk shall collect a fee of \$2 for each list of operators of underground facilities delivered to excavators in accordance with 12 NYCRR 53.

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1. Editor's Note: Former 12 NYCRR 53 was repealed; see now 16 NYCRR 753.

